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IN THE

Supreme Court of the United States

October Term, 1963.
No. 244

JOHN FRANK BUTLER,

Appellant,

vs.

WALTER DUNBAR, Director of Corrections of the State of California,

Appellee.

On Appeal From the Supreme Court of the State of California.

MOTION TO DISMISS.

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Appellee moves to dismiss this appeal because it fails to present a substantial federal question. The motion is made pursuant to the 16th rule of this Court.

Statement.

The appeal is from an order of the Supreme Court of California, dated February 14, 1963, denying Butler's petition for a writ of habeas corpus. In his petition, Butler challenged the constitutionality of Sections 6500-6510 of the California Penal Code. The opinion of the Court below is reported at 59 A. C. 169, and 28 Cal. Rptr. 508. It is to be read together with the opinion in the companion case of *In re De La O,* reported at 59 A. C. 140, and 28 Cal. Rptr. 489, certiorari denied *sub nom. De La O v. California,* No. 1503, October Term, 1962. The appeal poses no question of substance not already disposed of by the denial of certiorari in that case.

ARGUMENT.

Appellant is confined in the California Rehabilitation Center, a facility of the California Department of Corrections, established in accordance with a statutory program for the involuntary commitment of narcotic addicts and persons who, through repeated use of narcotics, are in imminent danger of becoming addicted. (Cal. Pen. Code, § 6400 *et seq.*) Butler was committed to the Rehabilitation Center under the provisions relating to the involuntary commitment of persons not charged with crime. (Cal. Pen. Code, § 6500 *et seq.*) The Center is defined by law as a facility for the "receiving, segregation, confinement, employment, education, treatment and rehabilitation" of addicts and persons in imminent danger of becoming addicts. (Cal. Pen. Code, §§ 6400, 6551.)[1] Appellant concedes, as he must (Jurisdictional Statement, p. 11), that California has the power to "establish a program of compulsory treatment for those addicted to narcotics. Such a program of treatment might require periods of involuntary confinement. And penal sanctions might be imposed for failure to comply with established compulsory treatment procedures." (*Robinson v. California*, 370 U. S. 660, 665.) So conceding, appellant nevertheless contends that he should not be where he is because he is undergoing cruel and unusual punishment, is held in involuntary servitude and is the victim of an improper legislative classification.

The foregoing contentions were convincingly answered by the Court below in deciding the companion case. (*In re De La O*, 59 A. C. 140, 28 Cal. Rptr.

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[1]Whatever the Sheriff of San Diego County may think (Jurisdictional Statement, pp. 16-17), it is not a prison. (*In re De La O*, 59 A. C. 140, 149-150, 28 Cal. Rptr. 489, 495-496.)

489.) Believing that *De La O* is dispositive of Butler's appeal, appellee will limit its argument to the refutation of a few of his specific contentions.

1. Butler implies (Jurisdictional Statement, pp. 10, 13) that the term of his confinement is three and one-half to five years. This is not so. He will be eligible for parole at the conclusion of six months' confinement. (Cal. Pen. Code, §§ 6403, 6506, 6520.)

2. Butler contends (Jurisdictional Statement, p. 14) that the fixing of a minimum and maximum term of confinement is inconsistent with the purpose of the statute. This contention is based upon a misconception of certain language in *De La O* (59 A. C. at pp. 153-155, 28 Cal. Rptr. at pp. 497-498), holding that persons committed to the Center may obtain judicial review by way of habeas corpus of a refusal or failure to parole them before the expiration of the maximum term. This language was proper since the statute contains no express provision for judicial inquiry into an administrative decision to withhold parole in an individual case. Surely it was not a covert confession of invalidity for the Court below to hold that the writ is available for that purpose. For example, those unfortunates who have been committed to a state hospital as mentally ill persons may seek judicial review of the question of their mental condition. (Cal. Welf. & Inst. Code, § 6620.) On appellant's theory, they too are undergoing cruel and unusual punishment. And were there no maximum limit to the potential period of his confinement, Butler would no doubt be contending that he had been sentenced to penal servitude for life.

3. Butler says (Jurisdictional Statement, pp. 15-16) that in upholding the statute the Court below ignored certain express functions of the Center, namely, to receive, segregate, confine, employ and educate the ad-

dict. Granted that the Center is not a hospital. Granted that patients do no work in hospital. Granted that in most cases a hospital does not educate its patients. But the author of this motion knows of one man who was taught to read in the Rehabilitation Center and it must be borne in mind that patients in hospital are received, segregated and confined.

4. Butler engages (Jurisdictional Statement, pp. 17-18) in a theoretical discussion of the meaning of "quarantine." Whatever the scope of a quarantine, it cannot be denied that two of the express purposes of the statute are the *treatment* and *rehabilitation* of narcotic addicts and those in imminent danger of becoming addicted. To equate rehabilitation and treatment with involuntary servitude is to snap the spine of the dictionary.

5. Butler urges (Jurisdictional Statement, pp. 18-21) that the statutory classification is arbitrary and unreasonable. In this connection he says that the definitions of "addict" and one in "imminent danger" of addiction are so broadly conceived as to require the commitment of a terminal cancer patient "addicted" to morphine in the course of alleviating his pain. It is a sufficient answer to this contention to point out that the constitutionality of the statute cannot be made to depend upon "gossamer possibilities" of a district attorney making a fool of himself.

Conclusion.

California's program for the involuntary commitment of narcotic addicts became effective in September 1961, nearly a year before the decision of this Court that addiction is a sickness and that the State may not put an addict in jail, then throw away the key. (*Robinson v. California, supra*, 370 U. S. 660.) Apparently But-

ler is not yet convinced by that decision, for he says at the close of his brief (Jurisdictional Statement, p. 23, fn. 13): "We do not contend that people who have not lost the power of self-control should not be treated. It is our position that persons who are *criminally accountable* for their conduct must be convicted in a *criminal proceeding* before the state may forcibly undertake to treat them on account of that conduct." But appellee is unwilling to regard Butler as a criminal and asks only, that by dismissal of his appeal, California may continue to treat him, to rehabilitate him, and eventually to restore him to society free, let us hope, from the stigmata of his disease.

Respectfully submitted,

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